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2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA  
4

5 EDWARD JOSE,

3:18-CV-0177-MMD-CBC

6 Plaintiff,

7 v.

**REPORT AND RECOMMENDATION**  
**OF U.S. MAGISTRATE JUDGE**

8 STATE OF NEVADA, *et al.*,

9 Defendants.  
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11 This report and recommendation is made to the Honorable Miranda M. Du, United  
12 States District Judge. The action was referred to the undersigned Magistrate Judge  
13 pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR IB 1-4.

14 On April 19, 2018, plaintiff submitted a civil rights complaint pursuant to 28 U.S.C.  
15 § 1983 (ECF No. 1). Plaintiff failed to pay the filing fee or submit a request to proceed *in*  
16 *forma pauperis* (ECF No. 3).

17 On October 30, 2018, the court ordered plaintiff to either pay the filing or submit an  
18 application to proceed *in forma pauperis* on or before November 29, 2018. *Id.* To date,  
19 plaintiff has failed to respond to this court's order.

20 District courts have the inherent power to control their dockets and "[i]n the exercise  
21 of that power, they may impose sanctions including, where appropriate . . . dismissal" of a  
22 case. *Thompson v. Hous. Auth. Of City of Los Angeles*, 782 F.2d 829, 831 (9<sup>th</sup> Cir. 1986).  
23 A court may dismiss an action, with prejudice, based on a party's failure to prosecute an  
24 action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v.*  
25 *Moran*, 46 F.3d 52, 53-54 (9<sup>th</sup> Cir. 1995) (dismissal for noncompliance with local rule);  
26 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir. 1992) (dismissal for failure to comply  
27 with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41  
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1 (9<sup>th</sup> Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to  
2 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9<sup>th</sup>  
3 Cir. 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779  
4 F.2d 1421, 1424 (9<sup>th</sup> Cir. 1986) (dismissal for lack of prosecution and failure to comply  
5 with local rules).

6 In determining whether to dismiss an action for lack of prosecution, failure to obey  
7 a court order, or failure to comply with local rules, the court must consider several factors:  
8 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
9 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
10 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
11 *Thompson*, 782 F.2d 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;  
12 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

13 Here, the court finds the first two factors, the public's interest in expeditiously  
14 resolving this litigation and the court's interest in managing the docket, weigh in favor of  
15 dismissal. The third factor, risk of prejudice to defendants, also weighs in favor of  
16 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
17 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*  
18 *West*, 542 F.2d 522, 524 (9<sup>th</sup> Cir. 1976). The fourth and fifth factors – public policy favoring  
19 disposition of cases on their merits, and the availability of less drastic alternatives – are  
20 greatly outweighed by the factors in favor of dismissal discussed herein.

21 Based upon the foregoing, the undersigned magistrate judge recommends that this  
22 action be dismissed without prejudice.

23 The parties should be aware of the following:

24 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of  
25 Practice, the parties may file specific written objections to this Report and  
26 Recommendation within fourteen days of receipt. These objections should be entitled  
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1 "Objections to Magistrate Judge's Report and Recommendation" and should be  
2 accompanied by points and authorities for consideration by the District Court.

3 2. This Report and Recommendation is not an appealable order and any notice  
4 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District  
5 Court's judgment.

6 **RECOMMENDATION**

7 For the reason stated above, the undersigned Magistrate Judge recommends that  
8 the District Court enter an order **DISMISSING** this action without prejudice.

9 DATED: February 6, 2019.

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12 UNITED STATES MAGISTRATE JUDGE  
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